U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2009

IN RE: Applicant: [redacted]

PETITION: Proposal for Designation as a Regional Center Pursuant to Section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993 as amended by Section 402 of the Visa Waiver Permanent Program Act of 2000.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the proposal for designation as a regional center. The matter is now before the Administrative Appeals Office (AAO) on certification. The director's decision will be affirmed.

The applicant seeks designation as a regional center pursuant to section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, 106 Stat. 1874 (Oct. 6, 1992), as amended by section 402 of the Visa Waiver Permanent Program Act of 2000, Pub. L. 106-396, 114 Stat. 1637 (Oct. 30, 2000).

The director determined that the potential projects were too all encompassing, that the economic analysis using IMPLAN[1] was not accompanied by a business plan and that the proposal did not establish that the projects were economically feasible and would create at least 10 direct or indirect jobs within two and a half years. The director also questioned how the economic analysis for Baltimore could be applied to the 14 other counties included in the regional center plan. Finally, the director concluded that the applicant had not provided a detailed statement regarding the amount and source of capital which has been committed to the regional center. The director then certified the decision to the AAO pursuant to 8 C.F.R. § 103.4. The applicant was afforded 30 days to supplement the record pursuant to 8 C.F.R. § 103.4(a)(2).

On certification counsel asserts that only a general proposal is required at the regional center application stage and that U.S. Citizenship and Immigration Services (USCIS) has approved other regional centers with several proposed areas of investment. Regardless counsel states that the applicant has agreed to narrow its initial focus to two projects with the understanding that future projects could be the subject of applications for amendments to the regional center approval. Counsel also questions why the original economic analysis for two sample projects was found lacking. The applicant submits a business plan for the regional center, an updated economic analysis, materials about the proposed development projects and additional evidence regarding the source of the funds used to start up the regional center.

For the reasons discussed below, while we withdraw the director's concern that the original regional center area was not contiguous, the materials submitted on certification should have been submitted in response to the director's request for additional evidence and need not be considered on certification.

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[1] Minnesota IMPLAN Group, Inc.'s website provides:

> IMPLAN is an economic modeling tool that allows a user to create a detailed social accounting picture and a predictive multiplier model of a regional economy. It can then be used to conduct impact analyses. IMPLAN is two parts, the IMPLAN Professional® 2.0 software and IMPLAN® data file(s) relating to the Study Area being analyzed. The Study Area may consist of a state, county, sub-county area such as ZIP code areas, or group of any of these areas.

See http://implan.com/v3/index.php?option=com_virtuemart&page=shop.browse&category_id=2&Itemid=43&vmcchk=1&Itemid=143 (accessed December 17, 2009).

That said, the matter was certified to the AAO pursuant to 8 C.F.R. § 103.4 for guidance on the issues before the director. Thus, in the interest of providing such guidance, we will address the evidence submitted on certification. Even considering this evidence, however, there are numerous deficiencies that would preclude approval of the application. We note these deficiencies below as they would need to be resolved should the applicant use this evidence to support a new application. Finally, we note that the state's designation of a targeted employment area (TEA) submitted initially does not meet the requirements of 8 C.F.R. § 204.6(i).

The AAO maintains plenary power to review each matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from *or review of* the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

I. Procedural Issues

The applicant initially submitted counsel's cover letter; the credentials of the applicant's manager; the applicant's organizational documents; a geographical description of the proposed regional center area; an economic impact analysis using IMPLAN; proposed limited partnership, escrow and subscription agreements; a proposed offering memorandum; a one-page budget plan and a one-page plan of operation. The initial filing did not include a business plan, general or otherwise.

On March 6, 2009, the director requested additional evidence. Specifically, the director requested evidence that the regional center would be a contiguous area, a detailed statement explaining the amount and source of the capital committed to the regional center, an operational plan including promotional efforts and an economic plan of the overall impact of the regional center. Significantly, the director also requested a business plan that includes "milestones, dates, costs for each project, number of investors for each project and plans for creating the jobs within two years after the investor obtained conditional resident status." Finally, the director requested contracts, letters of intent or advisory agreements between the regional center and any other party to engage in the activities on behalf of the regional center.

In response, counsel asserted that the regional center need not be a contiguous area but, if USCIS disagrees, the applicant had agreed to eliminate Queen Anne and Talbot counties. Counsel further asserted that the director's request for a more detailed statement regarding the regional center's operational funds is not mandated under the regulations. In addition, counsel asserted the IMPLAN analysis submitted is a sufficient economic analysis of the regional center's potential impact. Finally, counsel asserted that the director had requested too detailed a business plan and that no agreements had been entered as of yet. The applicant submitted a chart of expenses incurred by the applicant as of that date, a letter describing IMPLAN and a list of escrow agents. The applicant did not submit a marketing plan or a business plan, specific or general. Rather, the applicant submits a business plan and new economic analysis on certification.

The regulation at 8 C.F.R. § 103.2(b)(8)(iii) states that the applicant shall submit additional evidence as the director, in his or her discretion, may deem necessary. The regulation at 8 C.F.R. § 103.2(b)(11) states that submission of only some of the requested evidence will be considered a request for a decision on the record. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or, by extension, certification.[2] *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* For the reasons discussed in detail below, the director's request for additional evidence was not in error. Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Counsel does not assert that *Matter of Soriano*, 19 I&N Dec. at 764 and *Matter of Obaigbena*, 19 I&N Dec. at 533 are not applicable to applications for regional center designation and we find that they are. When an applicant fails to respond to a request for evidence, USCIS then can only consider the requested evidence within the context of a new application or petition. The effort of filing a new application or petition is a consequence of these precedent decisions for all of the petitions under the jurisdiction of the AAO. Even if binding precedents did not preclude consideration of the requested evidence submitted on certification, the proposal is not approvable for each of the reasons discussed below.

II. Relevant Statute and Regulations

Section 203(b)(5)(A) of the Act, as amended, provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
>
> (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

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[2] While USCIS does, on a case-by-case basis consider new evidence on certification, the fact that the regulation at 8 C.F.R. § 103.4(a)(2) does not specifically provide for the submission of new evidence in addition to a brief on certification, supports our finding that the AAO is not required to consider new evidence that would not be considered on appeal.

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended by section 402 of the Visa Waiver Permanent Program Act of 2000, provides:

> (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.
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> * * *
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> (c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Attorney General shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

The regulation at 8 C.F.R. § 204.6(m) provides, in pertinent part:

> (1) *Scope.* The Immigrant Investor Pilot Program is established solely pursuant to the provisions of section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, and subject to all conditions and restrictions stipulated in that section. Except as provided herein, aliens seeking to obtain immigration benefits under this paragraph continue to be subject to all conditions and restrictions set forth in section 203(b)(5) of the Act and this section.

III. Analysis

A. ***Contiguous Area***

The regulation at 8 C.F.R. § 204.6(m)(3) provides that each regional center must describe "how the regional center focuses on a geographical region of the United States." The geographical limitation of the regional center was emphasized in *Matter of Izummi*, 22 I&N Dec. 169, 174 (Comm'r. 1998).

The proposed regional center in this matter covers 14 counties in Maryland. In the request for additional evidence, the director concluded that Queen Anne's County and Talbot County are not contiguous with the remaining 12 counties because Kent County is not included. In response, counsel asserted that a regional center need not be contiguous but that the applicant was willing to drop Queen Anne's and Talbot counties.

We concur with the director that a regional center must be a single contiguous area. A finding that a regional center need not be contiguous would lead to the absurd result that a geographic region could include a section of Maryland and sections of Texas, California and Hawaii. While this example is extreme, a case-by-case analysis of each non-contiguous regional center to determine whether it constitutes a reasonable "geographic region" is unnecessarily complex. Requiring a contiguous area ensures that the regional center will indeed focus on a geographical region.

Despite our concurrence with the director that a regional center must be a single contiguous area, we are persuaded that Queen Anne's County and Talbot County, which are contiguous with each other, are sufficiently contiguous with the remaining counties. Queen Anne's County is only separated from Anne Arundel County, one of the remaining 12 counties in the regional center, by the Chesapeake Bay, which is traversed by the Chesapeake Bay Bridge between these two counties. Thus, we are satisfied that the 14 counties in the initial proposal are sufficiently contiguous.

B. ***Business Proposal and Economic Analysis***

The regulation at 8 C.F.R. § 204.6(m)(3) provides:

> *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:
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> (i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;
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> (ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;
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> (iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;
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> (iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and
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> (v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

The applicant did not submit a business plan initially or in response to the director's request for a business plan. Counsel's initial cover letter includes some information that would be present in a business plan. Specifically, counsel asserted that the regional center would consider investing in 11 types of projects: office buildings, lab sciences research space, biotechnology manufacturing, retail stores, restaurants, owner occupied and rental residences, hotels and short-term condominium rentals, recreational and sports activities, sports complexes, a bus station and parking garages. Counsel then identified three sample projects: the Gateway South Development, the Life Sciences Park and Residential Development and the Westport Waterfront Development. While counsel asserted that the regional center and individual investors would form a limited partnership for each project, counsel provided no explanation as to how these limited partnerships would invest in any of the sample projects or the other 11 types of businesses. For example, he did not indicate whether they would buy equity in an existing development company, loan money to construction companies, etc. Counsel did not name the developers of the three projects listed as sample projects or indicate that any negotiations have commenced between the regional center management and these developers. Significantly, the unsupported assertions of counsel do not constitute evidence and, thus, cannot be accepted in lieu of a formal business plan prepared by the regional center. *See Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

The applicant also submitted an analysis of the economic impact of three generic types of projects as well as the three sample projects identified by counsel. The report states that the analysis, including the analysis of the generic types of projects, is based on data from the IMPLAN model for Baltimore City and County but asserts that this analysis applies to the remaining counties in the regional center which, while "relatively affluent," show changes in personal income closely tied to the economy of Baltimore City and County. The report calculates the number of direct construction jobs for the three generic projects but does not specify whether these will be jobs that last two years or whether they are intermittent regardless of who holds the position. Intermittent jobs cannot be considered. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion). In addition, the report acknowledges that IMPLAN "and all other input/output models – the sector for owner-occupied dwellings (industry 509 in IMPLAN) assumes by definition that no indirect jobs are created." The report determined that there are real jobs created by the construction of residences, such as jobs for mortgage lenders and public sector jobs created by increased property taxes. Although the report considers these jobs as those created directly by revenue because "these additional jobs clearly exist," the report does not provide any published economic analysis source for calculating the number of these jobs or for considering them to be equivalent to direct jobs.

As stated above, the applicant chose not to comply with the director's request for a detailed business plan and a more focused economic analysis. Regarding the business plan, counsel asserts that neither the law nor the regulations justified the director's request for a detailed business plan. Counsel alleges that a regional center applicant need only submit a "general prediction" of the projects in which it will invest. Counsel stated that most regional center applicants have not identified specific projects at the time they apply for regional center designation. Rather, counsel

asserted that a detailed business plan would be submitted at the Form I-526 stage. Regarding the economic analysis, counsel asserted that USCIS has accepted IMPLAN results in the past.

The director concluded that the proposed generic types of projects were too broad and that data from Baltimore had not been shown to be relevant for the full regional center. The director also questioned the IMPLAN analysis in the absence of a business plan explaining exactly how the regional center would invest in the various industries. The director concluded: "The economist's analysis of three projects using the IMPLAN model was not accompanied by any sample business plans or proposals elsewhere in the file showing that these were the types of projects that were intended to be developed by [the applicant] or how [the applicant] might become involved."

On certification, counsel reiterates his previous assertion that a regional center applicant need only provide a general proposal and that a more detailed business plan would be available at the Form I-526 stage. Nevertheless, counsel states that the applicant is willing to "narrow its focus" to two projects in Baltimore: the Gateway South project and the Westport Waterfront project and that the applicant will file amendments as new projects present themselves.

On certification the applicant submitted a business plan and a new economic analysis of the two projects identified by counsel. As stated above these documents were specifically requested by the director and the applicant chose not to comply with that request. On that basis alone the petition may not be approved. 8 C.F.R. § 103.2(b)(14). While counsel is correct that the regulations provide that specifics are required at the Form I-526 petition stage and include provisions for terminating a regional center's designation, these provisions do not imply that USCIS is prohibited from requesting the business plan when considering a regional center proposal. In fact, USCIS regulations specifically provide that USCIS may request additional evidence "[i]f all required initial evidence has been submitted but the evidence submitted does not establish eligibility." 8 C.F.R. § 103.2(b)(8)(iii).

In this case counsel appears to be suggesting that USCIS must approve a regional center proposal encompassing 14 counties and 11 types of businesses based on an analysis of three generic projects and three sample projects with no business plan explaining how the limited partnerships would identify, negotiate and invest in these projects. The regulation at 8 C.F.R. § 204.6(m)(3)(ii) requires the applicant to provide "verifiable" detail as to how the jobs will be created. The director cannot determine whether an economic analysis is reasonable without some type of business plan explaining how the applicant plans to invest in the proposed projects. USCIS has a clear interest in evaluating the business plan at the regional center stage. Binding precedent makes clear that USCIS does not pre-adjudicate petitions or eligibility requirements. Each petition must be adjudicated on its own merits. *Matter of Izummi*, 22 I&N Dec. at 190-191. Despite this binding precedent we note that USCIS is encouraged to accept any projections previously submitted at the regional center stage when adjudicating the Form I-526 petitions filed by individual alien investors, absent fraud and provided that there has been no material change.[3] USCIS will not, however, abdicate its authority to

[3] *See, e.g.*, the March 28, 2009 Employment Creation Immigrant Visa (EB-5) Program Recommendations prepared by the USCIS Office of the Ombudsman, incorporated into the record of proceeding. The Ombudsman recommended that USCIS "specifically direct EB-5 adjudicators to not reconsider or

verify that the regional center proposals are reasonable. Thus, the director did not err in requesting a business plan and an economic analysis that takes into account the differences among all of the counties within the proposed regional center, and we need not consider the business plan or economic analysis submitted on certification. Nevertheless, for the reasons discussed below, the materials subsequently provided do not render the proposal approvable.

The business plan indicates that the limited partnerships will invest in one of two proposed projects, the Gateway South Development, to be developed by Cormony Development in conjunction with Harrison Development, and the Westport Waterfront Development, to be developed by Turner Construction Company.

The plan indicates that limited partnerships would invest $15 million in Gateway South, which is projected to cost $250 million. The plan discusses financing already available to the project and states that Cormony Development "has expressed that [the applicant] may come in as equity or may fund the projects directly in each phase." The applicant did not submit a letter from Cormony Development confirming its interest.[4]

The plan further indicates that the applicant is "in discussions" to invest in Phase I of the Westport Waterfront project and is "currently negotiating" to participate in the buildout of retail and office buildings to maximize job creation." The Westport Waterfront project is already financed up to $380,675,000 through private debt, private equity and grants. The business plan proposes that the limited partnerships would either "come in as equity (e.g. buying out the $30 million debt of Citigroup) or may fund individual projects within each phase (e.g. investing in the office and retail project for period 'J' in Phase I or investing in the office, retail and hotel project in parcel 'D' in Phase II)." The total investment by regional center limited partnerships would be between $30 million and $150 million. The applicant did not submit any evidence of ongoing negotiations or a letter from Turner Construction confirming that it is interested in the applicant's proposed investment strategies. Moreover, the plan does not explain how assuming financing that already exists, such as assuming Citigroup's loan, would create any jobs that would not otherwise be created. Without the proposed terms of such an agreement, we cannot conclude whether the "equity" from the limited partnerships instead of the "debt" from Citigroup would significantly improve Turner

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readjudicate the indirect job creation methodology in regional center cases, absent clear error or evidence of fraud."

[4] While USCIS understands that no project is guaranteed, we cannot ignore that, according to an August 12, 2009 article in the *Baltimore Business Journal*, accessed September 17, 2009 at http://baltimorebizjournals.com/baltimore/stories/2009/08/10/daily22.html and incorporated into the record of proceedings, Gateway South's Developers reached a deal to sell their development rights to Baltimore City Entertainment in May 2009, well before the August 2009 business plan submitted on certification. The August 12, 2009 article reports that Baltimore's spending board approved a change that would allow Baltimore City Entertainment to build a 3,750 machine slots parlor on 11 acres. Thus, even if we were not precluded from considering the documents submitted on certification, we would need to remand this matter to the director to advise the applicant of this derogatory evidence pursuant to 8 C.F.R. § 103.2(b)(16)(i) and resolve whether the proposed Gateway South project in cooperation with Cormony Development is even possible.

Constructions' financial situation such that the limited partnerships' financing could be said to create jobs and improve regional productivity. While we do not suggest that this type of financing is automatically disqualifying, the application cannot be approved unless the applicant first establishes that this assumption of existing financing will improve regional productivity.

The new economic analysis also raises concerns. The suggestion that the two projects will create 24,879 permanent new jobs does not appear reasonable in light of the fact that, according to the Bureau of Labor Statistics (BLS), Baltimore City and County combined had 431,037[5] workers in their civilian labor force, and 19,506[6] of them were unemployed (2008 annual average). If these job creation estimates are valid, the projects would create a new job for every single unemployed person in Baltimore City and County, plus 5,373 more. This concern, however, is not insurmountable should the appellant choose to submit another proposal in the future. While we find it reasonable to use the total number of unemployed simply as a general reference in evaluating the reasonableness of the applicant's projections, the applicant could address this concern by, for example, explaining how the regional center would recruit these workers and by providing examples of projects that have attracted similar numbers of workers from outside the area. As the record now stands, however, more explanation is needed.

Regarding the construction jobs, the analysis concludes that the project will create 7,567 construction jobs. Baltimore County and City, however, had only 26,703[7] workers employed in the construction industry in 2005 to 2007. Thus, the projections call for a 28 percent increase in the number of total construction jobs in the entire area. Once again, while this concern is not insurmountable, any future proposal submission would be bolstered by an explanation of how these projects will increase construction employment by such a significant percentage and an explanation of where these workers would be expected to come from.

Additionally, the data in the economic analysis suggests that the projects will increase "labor income" by nearly $1.3 billion. The US Census Bureau 2005 through 2007 data shows that Baltimore County and City workers' median earnings totaled $35,639[8] in these years. That amount multiplied by the number of employed workers (411,531) reflects total median worker earnings of $14,666,553,309. The economist should address how two projects can raise the entire region's worker earnings by nine percent.

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[5] Available at http://data.bls.gov/cgi-bin/dsrv, accessed September 24, 2009 and incorporated into the record of proceeding.

[6] Available at http://data.bls.gov/cgi-bin/dsrv, accessed September 24, 2009 and incorporated into the record of proceeding.

[7] Available at http://factfinder.census.gov, accessed September 24, 2009 and incorporated into the record of proceeding.

[8] Available at http://factfinder.census.gov, accessed September 24, 2009 and incorporated into the record of proceeding.

In any future filing, the economist must also explain how the analysis justifies its consideration of direct employees other than the construction workers.[9] The purpose of IMPLAN is to factor in all of the other workers. Thus, the analysis appears to overestimate job creation by estimating indirect jobs as direct jobs and then using IMPLAN to calculate indirect jobs.

The existence of math errors in the analysis, while not always material in this matter, raises concern as to the analysis' reliability. The most serious example is found in Exhibit B on page 7, which states that the offices will create 5,133 direct employees, the retail establishments will create 2,494 direct employees, the hotel will create 315 direct employees and the residences will create 67 direct employees. While the analysis concludes that the total direct employment is 8,209, the correct total is 8,009.

Finally, if the economist paid for data mining reports (i.e., Bizminer Industry Reports), such reports should be included in the record of any future filing as such reports would support the validity of the assessment.

While we do not suggest that the above concerns are insurmountable, they should be addressed in any future filing. Addressing these concerns at the regional center stage should increase the likelihood that, absent a material change, the aliens who invest in the project will not only be able to obtain conditional permanent resident status but also demonstrate compliance with the requirements to remove conditions on their status through the success of their investment in the regional center. We recognize that the applicant cannot guarantee the proposed regional center's success. However, the proposed regional center is not consistent with Congressional intent to improve regional productivity, nor is it in the interest of USCIS or the aliens who invest in a regional center, to approve a regional center whose proposal is not demonstrated to be based on a reasonable economic analysis.

C. ***Source of Funds and Promotional Efforts***

As quoted above, the regulation at 8 C.F.R. § 204.6(m)(3)(iii) requires that an applicant provide "a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center."

Counsel initially asserted that the applicant had established a marketing budget of $140,000 and would market the potential development projects through its website and by establishing representative agents or sponsors in multiple foreign offices. The applicant would also offer seminars to potential investors in foreign countries. Counsel stated that the source of the marketing budget would be the applicant and asserted that the applicant was submitting a "marketing plan" as Exhibit 12. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506.

[9] In the case of a project that has already been identified, the direct jobs as projected by the developer are more persuasive than estimates by an economist.

Exhibit 12 is a "Budget Plan" covering an unknown period projecting $139,680 in expenses including global marketing and travel to Korea for marketing purposes. The applicant also submitted, as exhibit 13, a one-page "Plan of Operation" that asserts the applicant will market the regional center to potential foreign investors in the United States and abroad. While the plan states that a proposed marketing plan is set forth in more detail "below and at Exhibit 13," the remainder of the document does not provide additional detail on marketing and it is the sole document in Exhibit 13.

The request for additional evidence stated that a detailed statement must include the exact amount of the funds dedicated to the regional center, the source of such funds and whether the amount is sufficient to sustain the regional center. The director also requested evidence that the funds had already been committed to the regional center. The director stated that the applicant must provide a "full description of past, current and future promotional activities" and "evidence of actual budgeted funds for the promotional activities.

In response, counsel asserted that the regulation at 8 C.F.R. § 204.6(m)(3)(iii) does not require an explanation as to how the amount is sufficient to sustain the regional center or evidence that the funds have already been committed. Counsel asserted that USCIS has previously only required a detailed marketing plan and budget, a statement of the amount and source of funds to be used for marketing and contractual prohibitions against using EB-5 investor capital for regional center expenses. Counsel provides a chart of expenses incurred by the applicant as of that date, amounting to $101,000. The applicant did not attempt to address any of the director's concerns through the submission of a detailed marketing plan or budget.

The director concluded that the applicant had failed to submit a detailed statement explaining the source of funds, the amount of capital committed and including a description of promotional efforts.

On certification, counsel asserts that his own summary of the applicant's expenses to date constituted "a detailed statement of the amount and source of capital committed to the regional center." Counsel's statement on certification fails to address that his previous summary made no mention of the source of any of these funds. While we concur with counsel that the regulations do not suggest that the applicant must establish sufficient committed funds to sustain the regional center indefinitely, the regulation at 8 C.F.R. § 204.6(m)(3)(iii) does require a *detailed* statement that includes a budget and identifies the source of the proposed regional center's funds. The statement must also include a description of past *and planned* marketing efforts. 8 C.F.R. § 204.6(m)(3)(iii). Exhibits 12 and 13 of the initial submission do not meet these requirements. The budget provided in Exhibit 12 did not even specify the period covered by the budget. Neither exhibit explains from where the applicant will obtain its marketing funds or describes past and planned marketing efforts. While some description of planned promotions was included in counsel's cover letter, we reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Even counsel's statements fail to address the source of the applicant's funds.

As we concur with the director that the applicant's response to the director's request for additional evidence was not responsive in that it did not include a statement attempting to address at least some of the director's concerns, we need not consider the new evidence submitted on certification. *See Matter of Soriano*, 19 I&N Dec. at 764; *see also Matter of Obaigbena*, 19 I&N Dec. at 533. We affirm the director's decision on this issue based on the record before her.

D. ***Targeted Employment Area***

Finally, while not addressed by the director, it is worth noting that the letter purporting to designate a "Targeted Employment Area" does not comply with the regulation at 8 C.F.R. § 204.6(i). The amount of capital required to be invested pursuant to section 203(b)(5) of the Act is $1,000,000 per alien. Section 203(b)(5)(C)(i) of the Act. This amount may be adjusted to one half that amount, or $500,000, in the case of an investment "made in a targeted employment area." Section 203(b)(5)(C)(ii) of the Act. *See also* 8 C.F.R. § 204.6(f). In cases involving a regional center, the regional center activities must "benefit companies located in targeted employment areas" if the investing aliens are to be able to rely on the reduced investment amount. *Matter of Izummi,* 22 I&N Dec. at 172-73.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Rural area* means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more.
>
> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

The regulation at 8 C.F.R. § 204.6(j)(6) states that:

> If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:
>
> (i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or
>
> (ii) In the case of a high unemployment area:
>
> > (A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new

> commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or
>
> (B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).

The regulation at 8 C.F.R. § 204.6(i) states:

> *State designation of a high unemployment area.* The state government of any state of the United States may designate a particular geographic or political subdivision located **within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate).** Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and **the method or methods by which the unemployment statistics were obtained,** may be provided to a prospective alien entrepreneur for submission with Form I-526. Before any such designation is made, an official of the state must notify the Associate Commissioner for Examinations of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.

(Bold emphasis added.)

The applicant submitted a November 4, 2008 letter from Maryland Governor Martin O'Malley advising that Maryland has designated the Maryland Department of Business and Economic Development (DBED) as the agency authorized to certify "areas of high unemployment under the Immigration Act of 1990."

The applicant also submitted a February 18, 2009 letter from [redacted] of DBED, purporting to designate six "Targeted Employment Areas." As will be explained, however, [redacted] letter does not comply with the regulation at 8 C.F.R. § 204.6(i).

[redacted] explains the methodology of determining these TEAs using Census 2000 unemployment data for contiguous census tracts as follows:

> The Department identified eligible areas by combining unemployment data for contiguous census tracts. The resulting areas have a population of at least 20,000 and a combined unemployment rate that equals or exceeds 150% of the U.S. employment rate, or are not part of any Metropolitan Statistical Area.

The first two areas are designated based solely on unemployment data, although [redacted] reference of the "Census 2000 unemployment data" makes it unclear whether he is using current unemployment data for the 2000 Census tracts or unemployment rates for 2000. [redacted] expressly states that the remaining areas include portions of counties based solely on the fact that they are not within a Metropolitan Statistical Area (MSA).

The regulations do not permit states to designate TEAs, which include both high unemployment areas and rural areas. Rather, they are only permitted to designate high unemployment areas. 8 C.F.R. §§ 204.6(i), (j)(6)(ii)(B). Both regulations specifically state that state designations can only apply to those areas that are *not* rural in that they are *either* within an MSA *or* a city or town with a population of 20,000 or more. [redacted], however, attempts to designate "TEAs" based solely on the fact that they do not fall within an MSA.

Whether or not a county falls within an MSA is only relevant as to whether an area within that county is "rural" as defined at 8 C.F.R. § 204.6(e). Specifically, a rural area cannot be within *either* an MSA *or* a town or city with a population of 20,000. 8 C.F.R. § 204.6(e) (definition of rural). [redacted] provides no information about the populations of the cities or towns within the counties he identifies as within his designated TEAs. Regardless, as stated above, a state may not designate rural areas, only high unemployment areas. 8 C.F.R. §§ 204.6(i), (j)(6)(ii)(B).

In light of the above, [redacted] letter does not meet the requirements of 8 C.F.R. § 204.6(i). In order to establish high unemployment areas within the regional center, the applicant must provide a new letter that explains "the methods by which the unemployment statistics were obtained" and which does not attempt to designate areas for reasons other than high unemployment. If it is the applicant's position that some of the counties within the regional center are "rural" as defined at 8 C.F.R. § 204.6(e), then it must provide the evidence mandated under 8 C.F.R. § 204.6(j)(6)(i), evidence that the area is not within either an MSA or within any city or town with a population of 20,000 or more.

Finally, as the record indicates the individual alien investors will place their money in escrow pending approval of their visa petition, we note that it will be the burden of the individual aliens who file petitions pursuant to an investment in this regional center to establish that their investment will be in an area that qualifies as either rural or a high unemployment area at the time their petition is filed. *Matter of Soffici*, 22 I&N Dec. 158, 159 (Comm'r. 1998).[10] Otherwise they will be required to document an investment of the full $1,000,000.

In summary, we uphold the director's findings that a business plan and a marketing plan are required evidence at the regional center proposal stage and that the applicant failed to provide this evidence in response to the director's specific request for such documents. Moreover, even if we were to

[10] Section 203(b)(5)(C)(ii) of the Act provides that, in order to qualify for a reduced investment amount, the investment must be in an area that qualifies as a TEA at the time of investment. Given this language, we read *Matter of Soffici*, 22 I&N Dec. at 159 as only requiring evidence that the area be a TEA at the time of filing where the funds are committed but not yet invested. We emphasize that the time of investment refers to the alien's investment and not any previous investments by the regional center.

consider the business plan submitted on certification, there are serious deficiencies that would need to be resolved prior to approval of a regional center proposal. Finally, while not raised by the director, the TEA designation does not comply with the regulatory requirements for a state designation. For the above stated reasons, considered both in sum and as separate grounds for denial, the proposal may not be approved.

ORDER: The decision of the director dated July 28, 2009 is affirmed.